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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/828,558 | 04/21/2004 | Randell L. Mills | RMI-017 | 5441 |
| 959 | 7590 | 10/14/2009 | EXAMINER | |
| LAHIVE & COCKFIELD, LLP FLOOR 30, SUITE 3000 ONE POST OFFICE SQUARE BOSTON, MA 02109 | | | POWERS, FIONA | |
| ART UNIT | PAPER NUMBER | | | |
| | | | 1626 | |
| MAIL DATE | DELIVERY MODE | | | |
| | | | 10/14/2009 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|--------------------------------------|-------------------------------------|
| Office Action Summary | Application No. 10/828,558 | Applicant(s) MILLS ET AL. |
| | Examiner Fiona T. Powers | Art Unit 1626 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 May 2009.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-20,25-35,37,38,71,72,76,77,79-124,128-158,166,167,172-174,180,181,228 and 229 is/are allowed.
- 6) Claim(s) 159-162 and 165 is/are rejected.
- 7) Claim(s) 163 and 164 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1-20,25-35,37,38,71,72,76,77,79-124,128-167,172-174,180,181,228 and 229.

DETAILED ACTION

Claims 1-20, 25-35, 37, 38, 71, 72, 76, 77, 79-124, 258-167, 172-174, 180, 181, 228 and 229 are pending in the application.

Receipt is acknowledged of the amendment filed May 26, 2009, which has been entered in the file.

Claim Rejections - 35 USC § 112

Claims 159-162 and 165 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 159-162 there is no antecedent basis in claim 157 for "multiarylpolymthine dye" as recited in these claims. Claim 157 recites "triarylpolymethine dye". To overcome this rejection, claim 157 should be amended by deleting "triarylpolymethine" and replacing it with "multiarylpolymethine", for example.

In claim 165, there is no antecedent basis in claim 157 for "aminophthalhydrazide". Claim 157 recites "a protected aminophthalimide". Note that if claim 165 is amended to recite "protected aminophthalhydrazide" it would be a duplicate of claim 158.

Response to Arguments

Applicant's amendments/arguments filed May 26, 2009 have overcome the rejection of the claims under 35 USC 112, second paragraph presented in the previous office action.

Allowable Subject Matter

Claims 159-162 and 165 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 163 and 164 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-20, 25-35, 37, 38, 71, 72, 76, 77, 79-124, 128-158, 166, 167, 172-174, 180, 181, 228 and 229 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fiona T. Powers whose telephone number is 571-272-0702. The examiner can normally be reached on Monday - Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fiona T. Powers/
Primary Examiner, Art Unit
1626

ftp
October 8, 2009